110-710

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1883.

No. 248.

THE COMMISSIONERS OF THE FREEDMAN'S SAVINGS & TRUST COMPANY, APPELLANTS,

vs.

GEORGE EARLE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED MAY 6, 1881.

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1 In the Supreme Court of the district of Columbia, April 10th, 1879.

GEORGE EARLE, complainant,
against
ROBERT P. DODGE et al., defendants. } No. 6724. Equity docket 19.

The President of the United States to Robert P. Dodge, Charles H. Cragin, jr., Nannie B. Blackford, Charles H. Cragin, defendant:

You are hereby commanded to appear in this court at its first special term occurring twenty days after service of this subpœna, and answer the exigency of the original bill this day filed, and entitled as above, under pain of attachment and such other process of contempt as the court shall award.

Witness: D. K. CARTTER,
Chief Justice.

[SEAL.] R. J. MEIGS, *Clerk, &c.*,
By C. ROBINSON, JR.,
Ass't Clerk.

Memorandum.—That the defendants herewith served are to enter their appearance in this suit in the clerk's office on or before the day at which this writ is returnable; otherwise the bill may be
2 taken for confessed.

(Indorsements on the above subpœna as follows:) Original No. 6724. Equity docket 19. Spa. to ans. original bill. George Earle *vs.* Robert P. Dodge et al. Issued April 10th, 1879. Nannie B. Blackford, Robt. P. Dodge. J. D. McPherson, sol. for compl't.

In the Supreme Court of the district of Columbia the 10th day of April, 1879.

GEORGE EARLE, complainant,
vs.
ROBERT P. DODGE, CHARLES H. CRAGIN, jr., NANNIE B. BLACKFORD, CHARLES H. CRAGIN, defendants. } No. 6724. In Equity.

Bill of Complaint.—Filed April 10, 1879.

The complainant says:

First. That he is a resident and citizen of the district of Columbia, and brings this suit in his own right.

Second. That the defendants are residents of the district
3 of Columbia, and are sued in their own right, except Charles H. Cragin, who is sued as trustee, as hereinafter stated.

Third. That the complainant on the 4th day of January, in the year 1878, recovered a judgment against the defendant Robert P. Dodge, on the law side of this court, for the sum of seven thousand

seven hundred dollars, with interest from the 15th day of September, 1876, and $21.30 costs of suit. The said judgment, of which a short copy is hereto annexed, is still in full force and wholly unpaid, and execution therein has been issued and returned "nulla bona" by the marshal, as by the said short copy will appear.

Fourth. That on the 1st day of June, in the year 1877, the said defendant Dodge, being seized and possessed of the parcels of land hereinafter described, executed, delivered, and acknowledged, together with his wife, Caroline R. Dodge, a certain deed,
4 recorded in liber 855, one of the land records of the district of Columbia, at folio 145, whereby he conveyed the said parcels of land to the defendant Charles H. Cragin, jr., upon trust to secure to the defendant Nannie B. Blackford the sum of two thousand dollars, three years after the date thereof, with interest at the rate of eight per cent. per annum, payable semi-annually, for which payments the said defendant Dodge had given his seven promissory notes, one for two thousand dollars, and the others for the semi-annual instalments of interest, which notes the complainant is informed have been endorsed to Charles H. Cragin. This complainant is informed and believes and charges that the several instalments of interest which have become due have been paid, but nothing more.

Fifth. That the parcels of land so as aforesaid conveyed lie in the city of Georgetown, in the district of Columbia, and are marked, laid down, and distinguished on the plat of said city as lots numbered two hundred and sixty-four, and two hundred and
5 sixty-five, and part of lot numbered two hundred and sixty-six (264, 265, 266) in Beall's addition of Georgetown, beginning for the same at a point formed by the intersection of the south side of Stoddert street with the west side of Montgomery street, and running thence south one hundred and twenty feet, thence west one hundred and seventy feet, thence north one hundred and twenty feet, and thence with the line of Stoddert street to the place of beginning. And the complainant says that he is entitled to the aid of this court to subject by its decree the equitable interest of the defendant Robert P. Dodge in the said parcels of land to the satisfaction of his said judgment.

The complainant therefore prays:

First. That the writ of subpœna may issue commanding the defendants to appear and answer this bill, and abide and per-
6 form such decree as may be made in this cause.

Second. That an account may be taken of the amount due to the defendant Nannie B. Blackford on account of the debt in this bill mentioned.

Third. That the lots of ground in the bill described may be sold under the decree and direction of this court subject to the incumbrance in favor of the said Charles H. Cragin, in such amount as may be ascertained to be due; and the proceeds of sale may be applied, after payment of the costs and expenses of this suit and of the sale,

to the satisfaction of the judgment of this complainant hereinbefore set forth.

Fourth. That this complainant may have such other and further relief as the nature of his case may require and to the court may seem just.

7 The defendants in this bill are Robert P. Dodge, Charles H. Cragin, jr., Nannie B. Blackford, Charles H. Cragin.

GEORGE EARLE.

DISTRICT OF COLUMBIA, *ss.*

I do solemnly swear that I have read the foregoing bill by me subscribed and know the contents thereof; that the facts stated therein of my own knowledge are true, and those stated upon the information of others I believe to be true.

GEORGE EARLE.

Sworn and subscribed before me this 10th day of April, 1879.

R. J. MEIGS, *Clk.*
By R. J. MEIGS, JR., *Ass't.*

JNO. D. MCPHERSON,
Sol'r for Compl't.

Short copy with Bill of Complaint.—Filed April 10, 1879.

Clerk's office Supreme Court of the district of Columbia.

GEORGE EARLE *vs.* ROBERT P. DODGE. } No. 18,834, docket.

8 1878, Jan. 4, judgment for pl'ff for $7,700 00
Interest on same from Sept. 15, 1876.....
Costs of suit..... 21 30

1879, April 2, judgment revived.
1879, " 9, fi. fa. issued and returned nulla bona.

Test: R. J. MEIGS, *Clerk*,
[SEAL.] By J. R. YOUNG, *Ass't Clerk.*
April 9, 1879.

Filed Apr. 10, 1879. R. J. Meigs, clerk.

9 In the Supreme Court of the district of Columbia.

GEORGE EARLE, compl't, *vs.* ROBERT P. DODGE et al., def'ts. } No. 6724. Eq. Docket 19.

Answer of Charles H. Cragin, jr.—Filed April 19, 1879.

The answer of Charles H. Cragin, jr., to the bill of complaint in the above-entitled cause.

1st. The allegations contained in the first paragraph are believed to be true.

2nd. Those of the second are also admitted.

3rd. Those of the third this defendant, of his own knowledge, knows nothing.

4th. Those of the fourth are true.

5th. The description of the pieces of ground set forth in the deed of trust recited in the fifth paragraph is also correct.

CHARLES H. CRAGIN, JR.

Subscribed and sworn to before me April 19, 1879.

R. J. MEIGS, *Clerk.*
By M. P. CLANCY, *Ass't Clerk.*

10 Filed April 19, 1879. R. J. Meigs, clerk.

11 In the Supreme Court of the district of Columbia.

GEORGE EARLE, complainant,
vs.
ROBERT P. DODGE, CHARLES H. CRAGIN, JR., NANNIE B. BLACKFORD, CHARLES H. CRAGIN, defendants. } No. 6724. In equity.

Answer of Nannie B. Blackford.—Filed April 19, 1879.

The answer of Nannie B. Blackford to the bill of complaint of George Earle.

This respondent says:

First & second. That her residence is correctly stated in the bill, and she presumes the residence of the other defendants to be correctly stated also.

Third. She has no knowledge of the matters stated in the third paragraph of the bill.

Fourth. She admits to be true the matters stated in the fourth paragraph of the bill, except as to the payment of interest on the notes mentioned in said paragraph; but having, as stated in
12 said paragraph, endorsed the notes therein mentioned to Charles H. Cragin, this defendant does not know what has been paid, and in fact has no interest in this suit.

Fifth. The description of the land on which the notes are secured, contained in the fifth paragraph of the bill, she presumes to be correct, but has no certain knowledge thereof.

And having answered, &c.

NANNIE B. BLACKFORD.

Filed Ap'r 19, 1879. R. J. Meigs, clerk.

In the Supreme Court of the district of Columbia.

GEORGE EARLE, compl't,
vs.
ROBT. P. DODGE et al., deft's. } No. 6724. Equity Docket 19.

Answer of Charles H. Cragin.

The answer of Charles H. Cragin to the bill of complaint in the above entitled cause.

13 1st. The allegations contained in the 1st paragraph are believed to be true.

2nd. Those of the 2nd are also admitted.

3rd. Those of the 3rd this defendant of his own knowledge knows nothing.

4th. Those of the 4th are true. This defendant is the holder, for value, of a promissory note for $2,000, dated June 1st, 1877, drawn by said Robt. P. Dodge, payable to the order of Nannie B. Blackford 3 years after date, with interest thereon until paid at the rate of 8 per centum per annum, payable semi-annually, and of the separate notes of even date with said principal not given, also for the said instalments of interest, of which said interest notes the three that have become due have been paid; nothing more. That said notes are secured by a deed of trust dated June 1st, 1877, duly recorded among the land records of said district in liber 855, folio 145,

14 et seq., given by said Dodge and wife to Chas. H. Cragin, jr., and conveys the pieces of ground described in the 5th paragraph of said bill.

5th. The description of the pieces of ground set forth in the 5th paragraph of said bill is correct.

Dist. of Col., county of Wash.

CHARLES H. CRAGIN.

Subscribed and sworn to before me this 19th day of April, 1879.

M. V. BUCKEY, *J. Peace.*

Chas. H. Cragin, jr., att'y. Filed Apr. 19, 1879. R. J. Meigs, clerk.

In the Supreme Court of the district of Columbia this 18th day of April, A. D. 1879.

Answer of Robert P. Dodge.—Filed April 19, 1879.

GEORGE EARLE, compl't,
vs.
ROBERT P. DODGE et al., def'ts. } In Equity. No. 6724.

15 The answer of the defendant Robert P. Dodge to the bill of complaint of the above named complainant.

answer the exigency of the petition of F. S. & T. Co. this day filed, and entitled as above, under pain of attachment and such other process of contempt as the court shall award.

22 Witness: D. K. CARTTER,
Chief Justice.

[SEAL.] R. J. MEIGS, *Clerk, &c.*
By R. J. MEIGS, JR., *Ass't Clerk.*

Memorandum.—That the defendant herewith served is to enter his appearance in this suit, in the clerk's office, on or before the day at which this writ is returnable; otherwise the bill may be taken for confessed.

(Indorsements on the above subpœna as follows:) No. 6724. Equity docket 19. Spa. to ans. petition of F. S. & T. Co. George Earle vs. R. P. Dodge et al. Issued Dec. 27, 1879. Returned April 5, 1880. Summoned Robert P. Dodge, March 25, 1880. F. Douglass, marshal.

23 In the Supreme Court of the district of Columbia.

GEORGE EARLE
v.
ROBERT P. DODGE, CHARLES H. CRAGIN, JR., NANNIE B. BLACKFORD, and CHARLES H. CRAGIN. } Equity No. 6724.

Petition of the Comm'rs of the F. S. & T. Co.—Filed Dec. 27, 1879.

The petition of the commissioners of the Freedman's Savings and Trust Company, John A. J. Creswell, Robert Purvis, and Robert H. T. Liepold, shows to this court as follows, to wit:

First. That the petitioners, John A. J. Creswell, Robert Purvis, and Robert H. T. Liepold, are the commissioners of the Freedman's Savings and Trust Company, and were appointed by virtue of an act of Congress approved the 20th day of June, 1874, entitled "An act amending the charter of the Freedman's Savings and Trust Company, and for other purposes," and that it is a corporation

24 formally doing business in the city of Washington, in the district of Columbia, by virtue of the authority vested by Congress in said corporation.

Second. That the petitioners, John A. J. Creswell, Robert Purvis, and Robert H. T. Liepold, commissioners of the Freedman's Savings and Trust Company, recovered a judgment against the defendant Robert P. Dodge at law, in equity cause No. 3217, on the 11th day of February, 1879, for the sum of seven thousand three hundred and eighty-six dollars and forty-seven cents ($7,386.47), with interest on seven thousand dollars from the 24th day of January, 1872, and on three hundred and eighty-six dollars and forty-seven cents from the 11th day of February, 1879, and $63.25 costs of suit. The said judgment is still in full force and wholly unpaid, and execution has

been issued thereon and returned "nulla bona" by the marshal, as will appear from the short copy of the judgment hereto attached.

25 *Third.* That on the 1st day of June, 1877, as your petitioners are informed and believe, the said defendant Robert P. Dodge being seized and possessed of certain pieces or parcels of land hereinafter described, executed and delivered and acknowledged, together with his wife Caroline R. Dodge, a certain deed recorded in liber 855, folio 145 of the land records of the district of Columbia, whereby he conveyed the said pieces or parcels of ground to the defendant Charles H. Cragin, jr., in trust, to secure payment to the defendant Nannie B. Blackford the sum of two thousand dollars three years after the date thereof, with interest thereon at the rate of eight per centum per annum, payable semi-annually, for which the said Dodge had given his seven promissory notes, one for the sum of two thousand dollars and the others for the several instalments of interest due thereon, which notes the petitioners believe have

26 been indorsed to Charles H. Cragin. Your petitioners are informed and believe that the several instalments of interest due thereon have been paid, but nothing more.

Fourth. That the parcels of land so as aforesaid conveyed lie in the city of Georgetown, in the district of Columbia, and are marked, laid down, and distinguished on the plat of said city as lots numbered two hundred and sixty-four, two hundred and sixty-five, and part of two hundred and sixty-six (264, 265, part 266) in Beall's addition to Georgetown; beginning for the same at a point formed by the intersection of the south side of Stoddert street with the west side of Montgomery street, and running thence south one hundred and twenty feet, thence west one hundred and seventy feet, thence north one hundred and twenty feet, thence in the line of Stoddert street to the beginning. And the petitioners say that they are en-

27 titled to the aid of this court to subject by its decree the equitable interest of the defendant Robert P. Dodge to the satisfaction of their said judgment.

The petitioners therefore pray:

First. That the said petitioners, John A. J. Creswell, Robert Purvis, and Robert H. T. Liepold, commissioners of the Freedman's Savings and Trust Company, be made parties complainant in this cause; and they hereby offer to pay the proper proportion of costs of this cause.

Second. That the writ of subpœna may issue commanding the defendants to appear and answer this petition and abide by and perform such decree as may be made in this cause.

Third. That an account be taken of the amount of money alleged to be due Nannie B. Blackford on account of the debt hereinbefore mentioned.

Fourth. That the lots or parcels of ground described herein

28 may be sold under the decree of this court, and the proceeds of such sale brought into court and distributed according to law.

Fifth. That the petitioners may have such other and further relief as the nature of this case may require and to the court may seem just.

JNO. A. J. CRESWELL,
ROBT. PURVIS,
ROBERT H. T. LIEPOLD,
Commissioners F. S. & T. Co.
ENOCH TOTTEN,
Sol. for Petitioners.

DISTRICT OF COLUMBIA, }
County of Washington, } *ss.*

I, Robert H. T. Liepold, being first duly sworn, do depose and on my oath say that I have read the foregoing petition, and that the facts therein stated upon my own knowledge I know to be true, and the facts stated upon information and belief I believe to be true.

ROBERT H. T. LIEPOLD.

Subscribed and sworn to before me this 26th day of Dec., 1879.

29

R. J. MEIGS,
Clerk S. C. D. C.,
By R. J. MEIGS, JR.,
Ass't Clerk.

Short Copy with Petition.

Clerk's office Supreme Court of the district of Columbia.

F. S. & T. COMPANY }
vs. } No. 3217. Docket 12.
ROBERT P. DODGE et al. }

1879, Feb. 11. Judgment for $7,386.47 against def't Robt. P. Dodge.
Interest on $7,000 from Jan'y 24, '72, and on 386.47 from Feb. 11, 1879.
Costs of suit, $63.25.
1879, Dec. 2. Fi. fa. issued.
" " 19. " " returned nulla bona Dec. 19, 1879.

[SEAL.] Test:

R. J. MEIGS, *Clerk,*
By M. R. CLANCEY,
Ass't Clerk.

Filed Dec. 27, 1879. R. J. Meigs, clerk.

30 In the Supreme Court of the district of Columbia.

GEORGE EARLE
vs.
ROBERT P. DODGE et al. } Equity, No. 6724.

Order Granting Leave to Commr's of F. S. & T. Co. to Intervene in this Cause.—Filed December 27, 1879.

On motion of E. Totten, solicitor for the commissioners of the Freedman's Savings and Trust Company, it is, this 27 day of December, 1879, *Ordered*, That the commissioners of the Freedman's Savings and Trust Company have leave to intervene in the above entitled cause, and to come in as petitionary creditors.

By the court: MACARTHUR, *Justice.*

Filed Dec. 27, 1879. R. J. Meigs, clerk.

31 In the Supreme Court of the district of Columbia.

GEORGE EARLE
vs.
ROBERT P. DODGE. } In Equity. No. 6724. Doc. 19.

Answer of the defendant Robert P. Dodge to Commissioners' Petition.—Filed May 3, 1880.

The answer of the defendant Robert P. Dodge to the petition of the commissioners of the Freedman's Savings and Trust Company.

He admits the allegations of the petition so far as the same relate to the recovery of the judgment of the Freedman's Savings and Trust Co. in equity cause No. 3217, equity doc. 12, in this court. The said petition omits to state what this defendant now avers, that the cause in equity in which the said judgment was rendered has been appealed to the Supreme Court of the United States, and said appeal has been perfected and the cause docketed in said court.

32 He believes that the real estate in the proceedings mentioned is correctly described, and that the encumbrance on it held by the defendant Charles H. Cragin is correctly stated.

The petitioner omits to state that on the 11th day of June, 1879, a decree was passed in this cause for the sale of the defendant's interest in the said real estate to satisfy the judgment of the complainant, the said George Earle.

This defendant is advised that after payment of the said judgment last mentioned the surplus of the proceeds arising from a sale of the property as prayed for in the complainant's bill will be liable to the claims of other judgment creditors, among whom are the petitioners, but this defendant objects to the payment of any money to the petitioners until the Supreme Court of the United States shall have decided the appeal there pending; for should such payment be made,

and should the judgment in favor of the petitioners be re-
33 vised, which this defendant is strongly encouraged by his coun-
sel to believe will be the case, he would find it difficult if not impossible to recover anything back from the petitioners who represent an insolvent institution. And should this court overrule this objection, this defendant prays that this court will exact from the petitioners security for the return of the money so paid before ordering any payment to the petitioner.

This defendant objects to having an account taken of the debt due to Charles H. Cragin, and he says that the same is not necessary, for the principal sum of the debt and the several instalments of interest are represented by separate notes secured by the deed of trust in the proceedings mentioned, and the amount of the said encumbrances, principal and interest, can be easily ascertained with-
34 out the expense of a reference, being also stated in the bill and answers and in the petition of the said commissioners of the Freedman's Savings and Trust Company.

ROB'T P. DODGE.

GORDON & GORDON,
Solrs. for defendant Robert P. Dodge.

I do solemnly swear that I have read the foregoing answer by me subscribed and know the contents thereof, and that the facts therein stated on my personal knowledge are true, and the facts therein stated on the information and belief of others I believe to be true.

ROB'T P. DODGE.

Sworn and subscribed to before me the 3d day of May, 1880.

[SEAL.] ROS. A. FISH,
Notary Public.

35 Filed May 3, 1880. R. J. Meigs, clerk.

Report of Charles Lanman, trustee, on sale.—Filed May 25, 1880.

WASHINGTON, D. C., *June* 25, 1880.

Mr. Charles Lanman, trustee, to Washington Law Reporter, dr., 631 F st.:

To pub. chancery sale eq. 6724..... 87 85

UNITED STATES OF AMERICA, }
District of Columbia, } *ss.*

On this 25th day of June, A. D. 1880, personally appeared before me, the undersigned, a notary public in and for the district aforesaid, John L. Gineck, being personally well known to me, and made oath in due form of law to the following statement, viz: That affiant is one of the publishers of the "Washington Law Reporter," a news-

paper published in the city of Washington, D. C.; that the
36 annexed notice was published in said "Washington Law Reporter" once a week for two successive weeks, as follows: October 13th & 20th, 1880.

JOHN L. GINCK.

Sworn and subscribed before me the day and year above written.

[SEAL.] LEMUEL BURSLEY,
Notary Public.

By virtue of a decree of the Supreme Court of the district of Columbia passed June 11th, 1879, in equity cause No. 6724, doc. 19, I will offer for sale at public auction, in front of the premises, on Friday, the twenty-fourth day of October, A. D. 1879, at four o'clock p. m., all the right, title, claim, and interest of Robert P. Dodge in and to the following real estate, that is to say: All those pieces or parcels of land in the city of Georgetown, in the district of Columbia, and known and distinguished on the plats and ground plan of said city as lots numbered two hundred and sixty-four
37 (264) and two hundred and sixty-five (265) and part of lot numbered two hundred and sixty-six (266) in Beall's addition to Georgetown, and contained within the following metes and bounds: Beginning for the same at a point formed by the intersection of the south side of Stoddert street with the west side of Montgomery street, and running thence south one hundred and twenty (120) feet; thence west one hundred and seventy (170) feet; thence north one hundred and twenty (120) feet, and thence with the line of Stoddert street to the place of beginning, improved by a handsome brick residence, No. 89 Montgomery street.

Terms of sale: One-fourth of the purchase-money in cash, and the residue in three equal instalments, payable with interest in six, twelve, and eighteen months from the day of sale, the deferred payments to be secured by the notes of the purchaser and a deed
38 of trust on the property sold, or all the purchase-money may be paid in cash, at the option of the purchaser. The property will be sold subject to taxes and assessments, of which a statement will be presented at the time of sale, and also subject to an indebtedness of $2,000, secured by a deed of trust bearing interest at the rate of 8 per cent. per annum, and payable three years from June 1, 1877, as will more fully appear by the proceedings in this cause. Conveyancing and recording at purchaser's cost.

CHARLES LANMAN,
Trustee, 120 West street, Georgetown, D. C.

THOS. DOWLING, *Auct.*

In the Supreme Court of the district of Columbia.

GEORGE EARLE
vs.
ROBERT P. DODGE et al. } In Equity. No. 6724. Doc. 19.

39 To the honorable the judge of the Supreme Court of the district of Columbia, sitting in equity:

The report of Charles Lanman, the trustee appointed by the decree passed in this cause to make sale of the real estate therein mentioned, shows:

That after having given bond with surety for the faithful discharge of the trust reposed in him by the said decree, and after giving at least two weeks' notice of the time, place, manner and terms of sale by advertisement in the Evening Star, a newspaper published in Washington city, in the district of Columbia, and extensively circulated in said city, and also in Georgetown, in the district aforesaid, as required by said decree, he proceeded on Friday, the 24th day of October, 1879, in front of the premises, at the hour of four o'clock p. m., to offer the said real estate for sale at public auction,
40 but did not receive at that time what he deemed an adequate bid for the same, and, with the concurrence of the complainant and the defendant Robert P. Dodge, he withdrew the property and adjourned the sale indefinitely.

Afterwards, your trustee, on Monday, the 17th day of May, 1880, and after having given at least two weeks' notice of the time, place, manner and terms of sale by advertisement in the said Evening Star newspaper as required by the said decree, at the hour of five o'clock p. m., in front of the premises, he proceeded to offer the said real estate for sale at public auction again, and at the said sale Caroline H. Dodge, the wife of the defendant Robert P. Dodge, being the highest bidder therefor, became the purchaser of the said real estate, that is to say, of the estate therein that was sold, at and for the sum of five
41 thousand five hundred and twenty-five dollars, and has fully complied with the terms of sale.

The said Caroline H. Dodge has paid to your trustee the sum of five thousand five hundred and twenty-five dollars ($5,525), (electing to pay cash as allowed by the terms of the decree), which is the entire amount of the purchase-money in cash.

The cost of advertising when the property was offered in October last was $44. The cost of advertising when the property was sold at the sale herein reported was $35.20.

The sale was made subject to the encumbrance of $2,000, as appears by the proceedings in this case, and to taxes, the amount of which was stated at the sale to be some $206.00.

Which is respectfully submitted.

CHARLES LANMAN.

42 DISTRICT OF COLUMBIA, to wit:

On this 24th day of May, 1880, before the subscriber, a notary public in and for said county, personally appeared Charles Lanman, trustee, and made oath that the matters and things stated in the foregoing report are true to the best of his knowledge and belief, and that the sale therein reported was fairly made.

[SEAL.] D. RITTENHOUSE,
Notary Public.

By virtue of a decree of the Supreme Court of the district of Columbia passed June 11th, 1879, in equity cause No. 6724, doc. 19, I will offer for sale at public auction in front of the premises, on Friday, the 24th day of October, A. D. 1879, at four o'clock p. m., all the right, title, claim and interest of Robert P. Dodge in and to the following real estate, that is to say: All those pieces or
43 parcels of land in the city of Georgetown, in the district of Columbia, and known and distinguished on the plats and ground plan of said city as lots numbered two hundred and sixty-four (264) and two hundred and sixty-five (265), and part of lot numbered two hundred and sixty-six (266), in Beall's addition to Georgetown, and contained within the following metes and bounds: Beginning for the same at a point formed by the intersection of the south side of Stoddert street with the west side of Montgomery street, and running thence south one hundred and twenty (120) feet, thence west one hundred and seventy (170) feet, thence north one hundred and twenty (120) feet, and thence with the line of Stoddert street to the place of beginning, improved by a handsome brick residence, No. 89 Montgomery street.

44 Terms of sale: One-fourth of the purchase-money in cash, and the residue in three equal instalments, payable, with interest, in six, twelve, and eighteen months from the day of sale, the deferred payments to be secured by the notes of the purchaser and a deed of trust on the property sold, or all the purchase-money may be paid in cash, at the option of the purchaser. The property will be sold subject to taxes and assessments, of which a statement will be presented at the time of sale, and also subject to an indebtedness of $2,000, secured by a deed of trust bearing interest at the rate of 8 per cent. per annum, and payable three years from June 1, '77, as will more fully appear by the proceedings in this cause. Conveyancing and recording at purchaser's cost.

CHARLES LANMAN,
Trustee, 124 West st., Georgetown, D. C.

THOS. DOWLING, *Auct.*
Oct. 3-4-7-9-11-14-16-18-21-22-23.

45 WASHINGTON, D. C., 18 *May*, 1880.

C. LANMAN to the EVENING STAR NEWSPAPER CO. DR.

To advertising in the Evening Star as follows:

Oct. 3,'79. Chan. sale..... $44 00

Received payment for the Co.

J. WHIT HERRON.

Sales for account of Charles Lanman, trustee, by Thomas Dowling, auction and commission merchant, S. W. cor. Penn'a ave. and 11th st.

Agreeable to the annexed advertisement, the property therein described was sold to Caroline H. Dodge for $5,525.

Charges:

Fee, 2 times offered.....	$20 00
Bellman.....	1 00
Adv'ts in Star.....	35 20
	$56 20

WASHINGTON, D. C., 18 *May*, 1880.

CHARLES LANMAN to the EVENING STAR NEWSPAPER CO. DR.

To advertising in the Evening Star, as follows:

May 1. Chan. sale..... $25 20

Received payment for Co.

J. WHIT HERRON.

46 By virtue of a decree of the Supreme Court of the district of Columbia passed June 11, 1879, in equity cause No. 6724, doc. 19, I will offer for sale, at public auction, in front of the premises, on Monday, 17th day of May, 1880, at five o'clock p. m., all the right, title, claim and interest of Robert P. Dodge in and to the following real estate, that is to say: All those pieces or parcels of land in the city of Georgetown, in the district of Columbia, and known and distinguished on the plats and ground plan of said city as lots numbered two hundred and sixty-four (264), two hundred and sixty-five (265), and part of lot numbered two hundred and sixty-six (266) in Beall's addition to Georgetown, and contained within the following metes and bounds: Beginning for the same at a point formed by the intersection of the south side of Stoddert street with the west side of Montgomery street, and running thence south one hundred
47 and twenty (120) feet, thence west one hundred and seventy (170) feet, thence north one hundred and twenty (120) feet, and thence with the line of Stoddert street to the place of beginning, improved by a handsome brick residence, No. 89 Montgomery street.

Terms of sale: One-fourth of the purchase-money in cash, and the residue in three equal instalments, payable, with interest, in six, twelve, and eighteen months from the day of sale, the deferred payments to be secured by the notes of the purchaser and a deed of trust

on the property sold, or all the purchase-money may be paid in cash, at the option of the purchaser. The property will be sold subject to taxes and assessments, of which a statement will be presented at the time of sale, and also subject to an indebtedness of $2,000, secured by a deed of trust, bearing interest at the rate of eight per cent.
48 per annum, and payable three years from June 1, 1877, as will more fully appear by the proceedings in this cause. Conveyancing and recording at purchaser's cost.

CHARLES LANMAN,
Trustee, 120 *West st., Georgetown, D. C.*

THOS. DOWLING, *Auct.*

My 1–3–5–7–8–10–12–14–15–17.

Filed May 26, 1880. R. J. Meigs, clerk.

Supreme Court of the district of Columbia.

GEORGE EARLE *vs.* ROBERT P. DODGE et al. } In equity. No. 6724. Doc. 19.

Order confirming sale of real estate nisi.—Filed May 25, 1880.

Charles Lanman, the trustee in the cause, having reported
49 to the court that he has sold the real estate in the proceedings in this cause mentioned, that is to say, all the right, title, claim, and interest of the defendant Robert P. Dodge in and to lots numbered two hundred and sixty-four (264), two hundred and sixty-five (265), and part of lot numbered two hundred and sixty-six (266) in Beall's addition to Georgetown, in the district of Columbia, beginning for the same at a point formed by the intersection of the south side of Stoddert street with the west side of Montgomery street, and running thence south one hundred and twenty (120) feet, thence west one hundred and seventy (170) feet, thence north one hundred and twenty (120) feet, and thence east with the line of Stoddert street to the place of beginning, to Caroline H. Dodge, for the sum of five thousand five hundred and twenty-five dollars, and that she has paid the whole of the purchase-money in cash, it
50 is this 25th day of May, A. D. 1880, ordered that the said sale be ratified and confirmed, unless cause to the contrary thereof be shown on or before the 24th day of June, 1880, provided that a copy of this order be published in the Washington Law Reporter and the Evening Star once a week in each of three successive weeks before said day.

A. B. HAGNER,
Asso. Justice.

Filed May 25, 1880. R. J. Meigs, clerk.

Proof of Publication.

WASHINGTON, D. C., *June* 16, 1880.

Mr. Charles Lanman, trustee, to Washington Law Reporter dr., 631 F street:

To publishing order nisi, eq. cause No. 6724..... $9 55

UNITED STATES OF AMERICA, *District of Columbia*, } ss.

On this sixteenth day of June, A. D. 1880, personally ap-
51 peared before me, the undersigned, a U. S. commissioner in and for the district aforesaid, John L. Ginck, being personally well known to me, and made oath in due form of law to the following statement, viz: That affiant is one of the publishers of the "Washington Law Reporter," a newspaper published in the city of Washington, D. C.; that the annexed notice was published in said "Washington Law Reporter" once a week for three successive weeks, as follows: May 31, June 7, and June 14, 1880.

JOHN L. GINCK.

Sworn and subscribed before me the day and year above written.

[SEAL.] LUCIEN O'BRIEN,
U. S. Commissioner.

In the Supreme Court of the district of Columbia.

GEORGE EARLE
v.
ROBERT P. DODGE et al. } No. 6724. Equity Doc. 19.

Charles Lanman, the trustee in this cause, having reported
52 to the court that he has sold the real estate in this cause mentioned, that is to say, all the right, title, claim, and interest of the defendant Robert P. Dodge in and to lots numbered two hundred and sixty-four (264), two hundred and sixty-five (265), and part of lot two hundred and sixty-six (266), in Beall's addition to Georgetown, in the district of Columbia, beginning for the same at a point formed by the intersection of the south side of Stoddert street with the west side of Montgomery street, and running thence south one hundred and twenty (120) feet, thence west one hundred and seventy (179) feet, thence north one hundred and twenty (120) feet, thence east with the line of Stoddert street to the place of beginning, to Caroline H. Dodge, for the sum of five thousand five hundred and twenty-five dollars, and that she has paid
53 the whole of the purchase-money in cash, it is this 25th day of May, A. D. 1880, ordered that said sale be ratified and confirmed, unless cause to the contrary thereof be shown on or before the 24th day of June, 1880, provided a copy of this order

be published in the "Washington Law Reporter" and the Evening Star once a week in each of three successive weeks before said day.

By the court: A. B. HAGNER, *Justice.*
True copy. Test: R. J. MEIGS, *Clerk, &c.*,
By M. A. CLANCY, *Ass't Clerk.*

THE EVENING STAR,
WASHINGTON, D. C., 22 *June*, 1880.

I hereby certify under oath that the advertisement of which the annexed is a copy was published in the Evening Star once a week until and including 16 June, 1880, commencing May 26, 1880.

S. H. KAUFFMAN, *Treas.*

Subscribed and sworn to before me this 22d day of June, 1880.

[SEAL.] JOHN T. C. CLARK,
Notary Public.

54 Supreme Court of the district of Columbia.

GEORGE EARLE
vs.
ROBERT P. DODGE et al. } In Equity. No. 6724. Doc. 19.

Order Nisi.—Filed June 25, 1880.

Charles Lanman, the trustee in this cause, having reported to the court that he has sold the real estate in the proceedings in this cause mentioned, that is to say, all the right, title, claim, and interest of the defendant Robert P. Dodge in and to lots numbered two hundred and sixty-four (264), two hundred and sixty-five (265), and part of lot two hundred and sixty-six (266) in Beall's addition to Georgetown, in the district of Columbia, beginning for the same at a point formed by the intersection of the south side of Stoddert street with the west side of Montgomery street, and running thence south one hundred and twenty (120) feet, thence west one hundred and seventy (170) feet, thence north one hundred and twenty (120) feet,
55 and thence east with the line of Stoddert street to the place of beginning, to Caroline H. Dodge for the sum of five thousand five hundred and twenty-five dollars, and that she has paid the whole of the purchase-money in cash, it is this 25th day of May, A. D. 1880, ordered that the said sale be ratified and confirmed, unless cause to the contrary thereof be shown on or before the 24th day of June, 1880, provided that a copy of this order be published in the Washington Law Reporter and the Evening Star once a week in each of three successive weeks before said day.

A. B. HAGNER, *Asso. Justice.*
A true copy—test: R. J. MEIGS, *Clerk,*
By M. A. CLANCY, *Asst. Clerk.*

Filed Jan. 25, 1880; R. J. Meigs, clerk.

56 Supreme Court of the district of Columbia.

GEORGE EARLE
vs.
ROBERT P. DODGE et al. } In equity. No. 6724. Doc. 19.

Order Ratifying Sale Finally.—Filed June 25, 1880.

Charles Lanman, the trustee in this cause, having, on the 25th day of May, A. D. 1880, reported to the court that he had sold the real estate in the proceedings mentioned to Caroline H. Dodge, for cash, and the court having on the same day ordered that the said sale should be ratified and confirmed, unless cause to the contrary thereof should be shown on or before June 24th, 1880, pro-
57 vided, however, that a copy of the said order should be published in the "Evening Star" and the "Washington Law Reporter" once a week in each of three successive weeks before said day; and it appearing to the court by the proof of publication filed herein that the said order of ratification was duly published in the said "Evening Star" and the "Washington Law Reporter" once a week in each of three successive weeks before the said 24th day of June, 1880, as required by said order, and no cause having been shown to the court why the said sale should not be finally ratified and confirmed, it is, this 25th day of June, A. D. 1880, ordered that the sale of the real estate in the proceedings mentioned, that is to say, of all the right, title, claim, and interest of the defendant Robert P. Dodge in and to lots numbered two hundred and sixty-four (264), two hundred and sixty-five
58 (265), and part of lot numbered two hundred and sixty-six (266), in Beall's addition to Georgetown, in the district of Columbia, beginning for the same at a point formed by the intersection of the south side of Stoddert street with the west side of Montgomery street, and running thence south one hundred and twenty (120) feet, thence west one hundred and seventy (170) feet, thence north one hundred and twenty (120) feet, and thence east with the line of Stoddert street to the place of beginning, to Caroline H. Dodge, be, and the same is hereby, finally ratified and confirmed; and it further appearing to the court by the report of the said trustee that the said Caroline H. Dodge, the said purchaser, has paid the whole of the purchase-money in cash, and is entitled to a conveyance of the said real estate, the trustee is hereby ordered
59 to convey the said real estate to her in conformity with the decree for sale passed in this cause. And it is further ordered that this cause be, and the same is hereby, referred to the auditor of the court to state the account of the trustee.

WALTER S. COX, *Justice, &c.*

In the Supreme Court of the district of Columbia.

GEORGE EARLE
vs.
ROBERT P. DODGE et al. } No. 6724. Eq. Doc. 19.

Report of Auditor on Trustee's Account.—Filed July 3, 1880.

Auditor's Report.

This cause was referred to me to state the trustee's account.

After due notice to the parties in interest, including the
60 petitionary creditors, I proceeded to execute the said order of reference and return herewith the proofs submitted.

The trustee's account will be found stated in schedule A, wherein he is charged with the proceeds of the sale and credited with the costs and expenses of the suit and the sale, together with an extra solicitor's fee, the same being a reasonable compensation for the services performed.

In schedule B will be found a statement of the judgment to which the balance of the fund is appropriated.

JAS. G. PAINE, *Auditor.*

July 2, 1880.

Schedule A.—Account of Charles Lanman, trustee.

Dr.			
To proceeds of sales of lots 264 and 265 and 266 in Beall's addition to Georgetown—cash			$5,525 00
Cr.			
By costs of suit		$31 10	
61 By publication of notice of sales, "Evening Star"	$44.00		
Do.	35.20		
"Law Reporter"	7.85	$87 05	
Publication of order nisi, "Evening Star"	19.69		
"Law Reporter"	9.55	29 24	
Auctioneer for offering		5 00	
Trustee's commissions, (including allowance to auctioneer for sale, $10)		195 75	
Solicitor's fee, extra		50 00	
Auditor's fee		20 00	
Balance for distribution		5,106 86	
			5,525 00

JAS. G. PAYNE, *Auditor.*

Schedule B.—Distribution.

Balance from schedule A—cash			$5,106 86
To judgment in favor of George Earle, cause No. 18834 at law..	$7,700		
Interest from Sept. 15, 1876, to July 2, 1880	$1,753.03		
	9,453.03		
Balance above applied to this ...	$5,106.86	$5,106 86	
Balance due July 2, 1880.....	4,346.17		
		$5,106 86	$5,106 86

62 JAS. G. PAYNE, *Auditor.*

THURSDAY, *July* 1, 1880.—12 o'clock m.

Met pursuant to notice.

Present: Mr. Robert McPherson, for the complainant.

Mr. Charles Lanman, the trustee, appears in person and submits the following statement:

The amount of the sales is $5,525, all of which has been paid in cash. The trustee claims credit for two advertising bills in the "Star"—one of $44.00 and one of $35.20. Vouchers are attached to the trustee's report, as also an advertising bill of $9.25 in the "Law Reporter." There is also a bill for the publication of the order nisi in the "Star" to be produced. I think possibly that there may be a bill in the "Law Reporter," and I have also sent for that. I claim no other credits, except my commissions.

The property was sold subject to taxes.

63 Adjourned until Friday, July 2, 1880, at 12 a. m.

FRIDAY, *July* 2, 1880.—12 o'clock a. m.

Met pursuant to adjournment.

Present: Mr. J. D. McPherson, for the complainant.

GEORGE EARLE sworn and examined by Mr. McPherson:

Q. Are you the plaintiff?

A. Yes, sir.

Q. State whether the amount of your judgment that you sued on in this case is due and unpaid, and if you have received anything on account.

A. It is due and unpaid, and I have received nothing on account since the judgment was rendered. Some interest was paid prior to that time. The judgment was entered with interest from the date to which the interest had been paid.

GEORGE EARLE.

Sworn to before me this 2d of July, 1880.

JAS. G. PAYNE, *Auditor.*

64 WASHINGTON, D. C., *July* 1, 1880.

C. Lanman to the "Evening Star" Newspaper Co., *Dr.*

To advertising in the Evening Star, as follows:

May 26. Equity 6724, $8\frac{3}{4}$, 1 and 4, ($19.69 allowed on this,) $26 25
Received payment for Co.

Clerk's office Supreme Court of the district of Columbia.

EARLE *v.* DODGE. } No. 6724. Docket 20.

1880, July 2. Costs of suit..... $21 10
10 00
$31 10

1880, Oct. 8. Received of R. W. McPherson eleven $\frac{10}{100}$ dollars, being additional costs due clerk's office, as audited herein, for trustee C. Lanman.

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR., *Asst.*

65 Filed July 3, 1880. R. J. Meigs, clerk.

In the Supreme Court of the district of Columbia.

EARLE *vs.* DODGE et al. } Equity. No. 6724.

Exceptions to Auditor's Report and Affidavits.—Filed July 28, 1880.

Exceptions to the Report of the Auditor.

The commissioners of the Freedman's Savings and Trust Company, by their counsel, except to the report of auditor in this cause filed on the 3d day of July, 1880, and for reasons assign the following, to wit:

First. Because the said auditor did not notify the said commissioners or their counsel of the said cause having been referred to him to state the account of the trustee appointed by the court in this cause to sell the property described in the report of the trus-
66 tee, nor did the auditor notify the said commissioners or their counsel of the time when he would sit to hear the said cause.

Second. Because the said auditor did not distribute the funds derived from the sale herein according to law, in that he did not do so *pro rata.*

ENOCH TOTTEN,
Sol'r for F. S. and T. Co.

COUNTY OF WASHINGTON, *District of Columbia*, } ss.

I, Edmund C. Blunt, being first duly sworn, depose and on my oath say that I, as representing Enoch Totten, counsel for the F. S. and T. Co., was present at the office of the auditor in this cause on Wednesday, June 30th, 1880, that being the day on which the auditor had notified Mr. Enoch Totten to be present, and the auditor informed me that the said cause of Earle *v.* Dodge *et al.* had been set for the next day, Thursday, July 1st; and on that day I
67 again appeared at the said auditor's office, and was informed that the said cause would be heard at 12 m. o'clock on Saturday, July 3d, 1880; and on that day, at the hour mentioned, I went to the office of the auditor and was there informed that the auditor had heard the said cause on the previous day, Friday, July 2d, and that his (the said auditor's) report had been that day filed.

EDMUND C. BLUNT.

Subscribed and sworn to before me this 30th day of July, A. D. 1880.

R. J. MEIGS, *Clerk*,
By J. R. YOUNG, *Ass't Clerk*.

Filed July 28, 1880. R. J. Meigs, clerk.

68 In the Supreme Court of the district of Columbia.

EARLE *v.* DODGE. } No. 6724.

Decree Confirming Auditor's Report.—Filed September 14, 1880.

This cause coming on to be heard upon the exceptions of John A. J. Creswell and other commissioners to the report of the auditor filed in this cause on the 3d day of July, 1880, it is this 14th day of September, 1880, ordered, adjudged, and decreed that the said report be in all things confirmed and ratified.

From which decree the said exceptants pray an appeal to the general term, which is allowed; and the amount of the security on said appeal is fixed at one thousand dollars.

W. S. COX, *Justice*.

Filed Sep. 14, 1880. R. J. Meigs, clerk.

69 Supreme Court district of Columbia.

EARLE v. DODGE. } In Equity. No. 6724.

Trustee Ordered to Pay Expenses of Sale.—Filed September 25, 1880.

Ordered, that the trustee in this cause pay the expenses of sale allowed by the auditor of the court in this cause in his report.

W. S. COX, *Justice.*

We consent.

ENOCH TOTTEN.
J. D. McPHERSON,
Per R. N. M.,
Sol. for Compl't.

Trustee ordered to pay expenses of sale. Filed Sep. 25, 1880. R. J. Meigs, clerk.

Supreme Court district of Columbia.

EARLE v. DODGE. } Equity. No. 6724.

Notice of Motion for Approval of Undertaking on Appeal.—Filed September 28, 1880.

Pursuant to rule 116, I hereby give notice that on Tues-
70 day next, the 28th day of September, 1880, at the opening of court on that day, or as soon thereafter as counsel can be heard, I shall move the court to approve the undertaking on appeal in the above cause, the principals being Robert Purvis and Robert H. T Leipold, commissioners of the Freedman's Savings and Trust Co., and the surety being Frederick Douglass, residence, Anacostia, D. C.

Sept. 25, 1880.

ENOCH TOTTEN,
For commr's F. S. & T. Co.

To JNO. D. McPHERSON, esq., att'y, &c.

Service of copy of above notice acknowledged this 25th day of September, 1880.

JNO. D. McPHERSON,
for Compl't.

Filed Sep. 28, 1880. R. J. Meigs, clerk.

71 Supreme Court district of Columbia.

EARLE v. DODGE. } Equity. No. 6724.

Notice to Enoch Totten of motion for distribution.—Filed Oct. 4, 1880.

Please take notice that on Saturday, October 2, 1880, at 10 o'clock

a. m., or as soon thereafter as the court will hear the case, I will move the court to proceed to order distribution and payment by the trustee in this cause of the moneys in his hands not claimed by the commissioners of the Freedman's Savings and Trust Company.

JNO. D. McPHERSON,
Solicitor for Compl't.

ENOCH TOTTEN, ESQ.,
Sol'r Com. Freedman's S. & T. Co.

Service acknowledged.

ENOCH TOTTEN,
For F. S. & T. Co.

Sept. 30, 1880. Service acknowledged. Enoch Totten,
72 for F. S. & T. Co. Filed Oct. 4, 1880. R. J. Meigs, clerk.

Supreme Court district of Columbia.

GEORGE EARLE
v.
ROBERT P. DODGE et al. } In equity. No. 6724. Eq. doc.

Notice to Trustee to Reserve $2,800 and Distribute Residue in Accordance with Report of Auditor.—Filed October 4, 1880.

This cause coming on to be heard on the motion of the complainant that the trustee in this cause be ordered to proceed to distribute the fund not claimed by the commissioners of the Freedman's Savings and Trust Company, petitioning creditors, and being argued by counsel for the complainant and the counsel for the said petitionary creditors, the proceedings were read and considered, and thereupon it is this fourth day of October, 1880, ordered that the trustee in this cause reserve the sum of twenty-eight hundred dollars ($2,800), and that he distribute the residue of said fund in accordance with the report of the auditor.

W. S. COX, *J.*

73 Filed Oct. 4, 1880. R. J. Meigs, clerk.

In the Supreme Court of the district of Columbia.

GEORGE EARLE
v.
ROBERT P. DODGE et al. } In equity. No. 6724.

Decree of General Term Affirming Decree of Special Term.—Filed December 10, 1880.

This cause coming on to heard upon the appeal of the commissioners of the Freedman's Savings and Trust Company from the decree of the court in special term confirming the report of the auditor

in this cause, it is this 10th day of December, A. D. 1880, ordered, adjudged and decreed that the said decree be, and the same is hereby, affirmed with costs; from which decree in open court the de-
74 fendants pray and are allowed their appeal to the Supreme Court of the United States (which is allowed) upon their giving bond in the penal sum of five hundred dollars, with security, to be approved by the court.

By order of the court: D. K. CARTTER,
Asso. Justice.

Filed Dec. 10, 1880. R. J. Meigs, clerk.

75 In the Supreme Court of the district of Columbia the 28th day of December, 1880.

GEORGE EARLE et al.
vs.
ROBERT P. DODGE et al. } Equity. No. 6724.

Know all men by these presents, that we, John A. J. Creswell, Robert Purvis, and Robert H. T. Leipold, commissioners of the Freedman's Savings and Trust Company, as principals, and Christian A. Fleetwood, as surety, are bound unto the above-named George Earle in the sum of five hundred (500) dollars, to be paid to the said George Earle, his executors or administrators. To which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals and dated this 28th day of December, 1880.

Whereas the above named commissioners of the Freedman's Savings and Trust Company have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said Supreme Court of the district of Columbia:

Now, therefore, the condition of this obligation is, that if the above named commissioners of the Freedman's Savings and Trust Company shall prosecute their said appeal to effect and answer all damages and costs if they shall fail to make good *his* plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JNO. A. J. CRESWELL, [SEAL.]
ROBT. PURVIS, [SEAL.]
R. H. T. LEIPOLD, [SEAL.]
Com'rs F. S. & T. Co.
CHRISTIAN A. FLEETWOOD. [SEAL.]

Sealed and delivered in presence of—

Approved this 31 day of December, 1880.

D. K. CARTTER,
Ch'f Just.

76 *Authentication of Record.*

Clerk's office Supreme Court of the district of Columbia.

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals together constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 18th day of February, 1881.

[SEAL.] R. J. MEIGS, *Clerk*,
By R. J. MEIGS, *Assistant Clerk*.

I, David K. Cartter, chief justice of said court, do certify the foregoing attestation by R. J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal this 18th day of February, 1881.

———,
Chief Justice. [SEAL.]

I, R. J. Meigs, clerk of said court, hereby certify that David K. Cartter, whose genuine signature is subscribed to the foregoing certificate, was at the time of signing and attesting the same chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 18th day of February, 1881.

[SEAL.] R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR., *Assistant Clerk*.

(Endorsed on cover:) Dist. of Columbia. Supreme Court. No. 248. The Freedman's Savings and Trust Company, appellant, *vs.* George Earle. Filed 6th May, 1881. 76 pages.

110-710

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 248.

THE COMMISSIONERS OF THE FREEDMEN'S SAVINGS AND TRUST COMPANY,
Appellants,

vs.

GEORGE EARLE,
Appellee.

Brief for Appellants.

ENOCH TOTTEN,
For Appellants.

R. O. POLKINHORN, PRINTER.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 248.

THE COMMISSIONERS OF THE FREEDMEN'S SAVINGS AND TRUST COMPANY, *Appellants,*

vs.

GEORGE EARLE, *Appellee.*

Brief for Appellants.

This is an appeal from a decree of the Supreme Court of the District of Columbia, and the question is whether the fund arising from the sale of an equity of redemption under a decree shall be distributed amongst judgment creditors *pro rata*, or according to *priority*.

Statement of the Case.

On the 10th day of April, 1879, the complainant exhibited his bill in this court, setting forth that on the 4th day of January, 1878, a judgment for $7,700.00 with interest

and costs, was rendered against the defendant, Dodge, and in his favor, and that an execution had been issued thereon but had been returned "*nulla bona*."

That on the 1st day of June, 1877, said Dodge being seized of the premises described in the bill, executed and delivered a deed whereby he conveyed the property to the defendant, Cragin, in trust to secure the payment of $2,000.00 to the defendant, Blackford; and that the interest was paid and not more. The complainant avers that he is entitled to the aid of the court of equity to subject the equitable interest of Dodge to the payment of his judgment.

Amongst other things, the complainant prays:

> "That an account may be taken of the amount due to the defendant, Nannie B. Blackford, on account of the debt in the bill mentioned." And "that the lots of ground in the bill described, may be sold under the decree and direction of this court, subject to the incumbrance in favor of the said Charler H. Cragin, for such amount as may be ascertained to be due, and the proceeds of sale may be applied, after payment of the costs and expenses of this suit, and of the sale, to the satisfaction of the judgment of this complainant hereinbefore set forth."

With the bill is filed a short note of the judgment at law, from which it appears that no execution was issued within a year, but that on the 2d of April, 1879, the judgment was revived, and that on the 9th of April, 1879, (the day before the bill was filed) an execution was issued, and on the same day was returned "*nulla bona*."

The proceedings on the part of the complainant, Earle, appear to have been with the concurrence and co-operation of all the defendants, inasmuch as each of them filed an answer on the same day, (April 19, 1879,) and within nine days after the original bill was filed. The defendant, Dodge, admits all the allegations in the bill. About two months before this bill was filed the judgment hereinafter mentioned,

for $7,386.47, had been entered up against Dodge. It is also a noticeable fact that the execution was issued and returned and the "short copy" was made all on the same day, April 9, (3.) This great haste, in the matter of procuring and filing these various answers, and especially that of the judgment debtor, is worthy of suggestion and notice, if it be only for the purpose of viewing in a proper light the great diligence of the complainant (appellee here,) upon which so much stress has been laid.

On the 11th of June, 1879, a decree was passed directing the sale of the interest of Dodge in the property. This decree requires the trustee to bring the money into court to be "disposed of" under its direction. (7.)

February 11, 1879, a judgment as at law was rendered against the said Dodge in favor of the appellant for the sum of $7,386.47 interest and costs; on the 2d of December, 1879, an execution was issued, and was (on the 19th of December, 1879), returned "*nulla bona*." December 26, 1879, an order was passed by the court authorizing the commissioners of the appellant to intervene as petitioning judgment creditors, and on the same day their petition was duly filed, and a writ of subpœna was issued, and served upon Dodge, to which petition Dodge filed his answer, May 3, 1880. May 17, 1880, the trustee sold the property for $5,525.00 in cash, subject to taxes, &c., and the incumbrance secured by the trust deed to Cragin. Upon the coming in of the report of the sale, the case was referred to the auditor of the court, to state the account of the trustee, &c., &c.

The auditor filed his report July 3, 1880, and applied the net proceeds of the sale ($5,106.86) to the payment of the judgment in favor of Earle to the total exclusion of the judgment of the Commissioners of the Savings Bank. In due time the Commissioners of the F. S. and T. Co. filed exceptions to the auditor's report, complaining of this mode of

distribution, and asserting that they were entitled to a *pro rata* share of the proceeds of the sale.

The cause was regularly heard on the exceptions at the Special Term of the court, and the principle adopted by the auditor for the distribution of the fund was adopted by the Special Term; the exceptions were overruled, and the report was "in all things confirmed and ratified." (24.) From this decree an appeal was taken to the Court in General Term by the present appellants, but the decree was affirmed and the commissioners appealed to this court.

Assignment of Error.

The court below erred in applying the net proceeds of the sale of the equity of redemption to the payment of the judgment in favor of George Earle, and in excluding the appellants from participation therein. The fund should have been distributed *pro rata*, or ratably, and not according to seniority of judgment.

Points and Authorities.

The question here is whether this fund in the hands of an equity court, arising from the sale of an equity of redemption, shall be distributed *pari passu*, or whether the creditor who had the elder judgment and who filed the bill to reach the equity, shall be first paid in full.

If this fund is distributed according to the principle adopted by the auditor, and followed by the court below, it must be either because the judgment was a lien upon the equity of redemption; because the original complainant was first in the race of diligence, or because the assets are not equitable assets, but legal, with some undetachable lien upon them in favor of the elder judgment.

I submit to the Court that the following propositions are fully supported by reason and authority:

First. A judgment at law, in this District, does not con-

stitute a lien upon an equity of redemption such as Dodge had in this property.

Second. In a race of diligence in an equity court, in a case of this kind, there being no *laches*, no advantage can be secured by one judgment creditor over another.

Third. The fund resulting from the sale made under the decree of the Equity Court constitutes *equitable* assets, and must be distributed *pro rata*, and not according to priority of judgment.

1. The first proposition is settled by the decision of this court in the case of *Morsell* vs. *Bank*, (91 U. S., 357.)

In that case it was decided, after full argument and consideration, that a judgment did not constitute a lien upon an equity of redemption in real estate, in the District of Columbia. The Supreme Court of the District of Columbia, in that case, had held that a judgment did constitute a lien upon such an equity. (1 MacArthur, 155.) In an elaborate opinion of Wylie, Justice, in the case of *Yates* vs. *Seitz*, (Wash. Law Rep., Sep. 9, '76, and also Nov. 17, '83,) the fund arising from the sale of such an equity had been distributed amongst judgment creditors according to priority, and not *pro rata*, and on the principle that a judgment was a lien on an equity of redemption on real estate, or on the funds arising from its sale by an equity court, which is the same thing.

In *Morsell* vs. *The Bank*, I argued for the bank, and could see no way of sustaining the doctrine of *Yates* vs. *Seitz*, and the practice established by many other cases in the court below, except on the principle that judgments became liens upon an equity of redemption, and thereby secured to the judgment creditors a *legal preference* or priority, which would not be taken away from them by the equity court. The case was argued upon that assumption, and the lower court sustained that doctrine. (*Bank* vs. *Morsell*,

1 MacArthur, 155.) But this court reversed the decree, and settled the law the other way. We are now told that the result is all the same, notwithstanding the judgment of this court, but another reason is assigned in support of the assertion; that is, that the fund arising from the sale of an equity of redemption constitutes *legal* and not equitable assets, and that the judgment, if not a lien on the equity of redemption, *is* a lien on the fund created by the equity court by selling it. This, it should seem, was paying regard to the form of things, and not the substance.

The court below has recently (1882) had this question again before it, and gave it further consideration. A junior judgment creditor had filed his bill in that court to sell an equity of redemption, and the senior judgment creditor subsequently came in by petition, and the Special Term gave priority to the senior judgment, which consumed the entire fund, thus wholly cutting out the original complainant. But the General Term, on appeal, adopted the *pro rata* rule, and reversed the decree. In so doing, it announced the somewhat confusing doctrine that there are "three rules" on this subject, more or less sanctioned by authority. The Court, speaking by Cox, J., says:

> "There are three rules in relation to the distribution of the proceeds of an equity of redemption, which have more or less foundation in authority, and were referred to by counsel in the very full discussion which was had of this case. The first, and the one followed by the court below, is that the judgment creditors must be satisfied in the order of their priority in obtaining their judgment. The second is, that the creditor who first files his bill, although a junior judgment creditor, shall be satisfied in full as a reward for his diligence. The third is, that the proceeds shall be treated as equitable assets, and distributed *pari passu* among all the judgment creditors. We have had great difficulty in deciding that either one is the final rule for this jurisdiction. In many cases, the first rule has been followed as such, by

the court, but we find, on looking into the matter, that there is great doubt as to the weight of authority in favor of that rule." (*Poole* vs. *Daly*, 1 Mackey, 460.)

2. The second proposition seems to be in accordance with the well settled rules of equity.

It has been said by them of old time, that "the race is not to the swift, nor the battle to the strong." Whatever may be said about the latter part of the quotation, there should be no doubt about the correctness of the beginning, so far as the principles of equity applicable to the case in hand are concerned. If it were otherwise, the happening or non-happening of an accident to a messenger carrying a bill to the clerk's office—the tripping of a man or a horse, or the slightest delay in a passenger train, might determine the direction of a fund of a million, in the distribution to judgment creditors with exactly equal equities.

In *Day* vs. *Washburne*, (24 How., 352,) a bill was filed by several simple contract creditors, to set aside as fraudulent, an assignment for the benefit of creditors, and other creditors of the same class filed supplemental bills, praying to be admitted to share the estate. This the Circuit Court for the District of Indiana did, and the complainants in the original bill appealed to this Court, but the decree was affirmed. This Court held, that as "neither of the creditors had acquired a *preference at law*, the application in chancery, upon its own principles, was a ratable distribution among all the creditors." (See, also, *Trustee*, &c., vs. *Beers*, 2 Black, 457.)

3. The third proposition is, that these funds are *equitable* and not *legal* assets, and are therefore distributable according to the equitable doctrine of equality.

The following is the definition of equitable assets:

"*Equitable assets* are such as can be reached only by the aid of a court of equity, and which are to be di-

vided, *pari passu*, among the creditors." (Bouvier's L. Dic.)

Our testamentary law gives strength, by analogy, to the argument in favor of a *pro rata* distrubition. The testamentary law of Maryland of 1785, (chap. 80, § 7,) in force in this District, directs the distribution of personal property, first among judgment creditors in full, and if the assets are insufficient, then *pro rata*. If a surplus exists it is to be divided among all other creditors without priority or preference. If the real estate has to be resorted to, the distribution is the same. The testamentory act of Maryland of 1798, (ch. 101, sub ch. 8, § S. 7,) in force here, in providing for the distribution of personal assets directs that judgments and decrees made in the lifetime of the decedant, be paid in full in preference to the simple contract and specialty debts. If the personal assets be insufficient to pay such judgments and decrees in full, then there shall be a ratable distribution amongst them.

An "equity of redemption is not liable, under the English law, to sale on execution as real estate;" it is held to be equitable assets, and is marshalled according to equity principles. But, in this country, the rule has very extensively prevailed, that an equity of redemption was vendible as real property on an execution at law. (4 Kent. 160.) But this is by virtue of special legislation and can have no application in this District, especially since the decision of this court in *Morsell* vs. *The Bank*.

> "In an accurate and legal sense, all the personal property of the deceased, which is of a salable nature, and may be converted into ready money, is deemed assets." Story's Eq., § 531.

That portion only of the assets of the deceased party is deemed legal assets, which by law is directly liable, in the hands of his executor or administrator, to the payment of debts and legacies, and are such as can be reached in

the hands of an executor or administrator by a suit at law against him; such as come into the hands and power of an executor or administrator, or such as he is entrusted with by law, *virtute officio* to dispose of in the course of administration. § 551.

Equitable assets include all which are chargeable with the payment of debts or legacies in equity, and which do not fall under the description of legal assets. § 552. *They are called equitable assets, because, in obtaining payment out of them, they can be reached only by the aid and instrumentality of a court of equity.* They are also called equitable for another reason; and that is, that the rules of distribution by which they are governed, are different from those governing the distribution of legal assets. § 552.

In the case of *Purdy* vs. *Doyle and others*, (1 Paige, 560,) the court says:

> "The rule of this court with regard to equitable assets is to put all the creditors on an equal footing; so where the assets are partly legal and partly equitable; and though equity cannot take away the legal preference on legal assets, yet, if one creditor has been partly paid out of such legal assets, when satisfaction comes to be made out of the equitable assets, the court will defer him until there is an equality in satisfaction to all the other creditors, out of the equitable assets, proportionable to so much as the legal creditor has been satisfied out of the legal assets."

Lord Hardwicke's test for determining the character of a fund to be equitable was the fact, that the creditor was obliged to come to an equity court,—"if the plaintiff is under the necessity of coming here for relief," the assets are equitable. (See Lord Hardwicke in *Plunket* vs. *Penson*, 2 Atk., 294.)

In *Moses* vs. *Murgatroyd*, (1 John, Ch. 130,) Chancellor Kent held, that surplus money in court arising from the sale of mortgaged property were, in N. Y. to be considered

as equitable assets and to be distributed amongst all the creditors *pari passu*. The same rule was enforced as to the equity of redemption, in the case of Sir Charles Cox' creditors, but in that case the controversy was between bond and simple contract creditors; there was no *judgment* creditor. *Creditors of Sir Charles Cox*, 3 P. W., 341.

In the case of *Sharp* vs. *Scarborough*, (4 Vesey, 538,) which is much relied upon for authority to support the opposite doctrine, the controversy was between the *bond* and *simple contract* creditors on one side and the judgment creditors on the other, and it was decreed "that the *judgment creditors* are to be paid in the first instance." And it was held in *Plunket* vs. *Penson*, (2 Atk., 290,) that an equity of redemption was equitable and not legal assets.

It will be remembered that the legal title here was in Cragin and not in Dodge, the debtor.

In *Marsh* vs. *First Nat. Bank*, (1 Otto, 357,) this Court says, upon the question of the operation of a judgment upon an equity of redemption, that "the judgments in no wise affected the trust premises until the bill was filed, that created a lien in favor of the *judgment creditors*."

In *Calvert* vs. *Gelston* (10 John, 507, 522,) the court declares that "if a fund for the payment of debts be created under an order or decree in chancery, and the creditors come in to avail themselves of it, the rule of equity then is that they shall be paid in *pari passu*, or upon a footing of equality."

See also the following: 1 Story's Eq. Jur., §§ 554, 555, 557; *Clay* vs. *Willis*, 1 B. & C., 364; *Calvert* vs. *Gelston*, 10 John., 507; 2 White & Tudor's L. Cases, 380, 388 *et seq.*; *Plunket* vs. *Penson*, 2 Atk., 294; *Wilder* vs. *Keeler*, 3 Paige, 167.

The decree of the court below ought to be reversed with directions to distribute the fund *pro rata*.

ENOCH TOTTEN,
For Appellants.

110-710

110-710

SUPREME COURT U.S.
FILED
JAN 29
JAMES H. McKENNEY, Clerk.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1883.

FREEDMAN'S SAVINGS AND TRUST COMPANY, *Appellants*,
vs.
GEORGE EARLE.
No. 248.

Brief for Appellees.

JOHN D. McPHERSON,
CALDERON CARLISLE,
For Appellees.

In the Supreme Court of the United States.

OCTOBER TERM, 1883.

FREEDMAN'S SAVINGS AND TRUST COMPANY, *Appellants*, *vs.* GEORGE EARLE. } No. 248.

BRIEF FOR APPELLEE.

This case comes up by appeal from the Supreme Court of the District of Columbia. The appellee was complainant below, and R. P. Dodge, C. H. Cragin, jr., N. B. Blackford and C. H. Cragin were defendants. The appellants came in after decree as petitionary creditors.

The Case.

The appellee, being a judgment creditor of R. P. Dodge, and *fi. fa.*, being returned *nulla bona*, filed a bill and obtained a decree for the sale of certain trust property of said Dodge to satisfy said judgment. The bill was filed for himself alone, without mention of other creditors, and the decree was that the property be sold to satisfy his judgment. (Rec., pp. 1, 6.)

At the time this bill was filed the Freedman's Company had a judgment against said Dodge, junior by more than a year to that of Earle, and had not issued execution thereon; nor was execution issued thereon until after the decree had been rendered in Earle's case, ordering that

the land "be sold to satisfy the judgment of the complainant against the said defendant, Robert P. Dodge, mentioned in the bill."

Then the appellants had execution issued and returned *nulla bona*, and filed a petition with the object, as it now seems, of being allowed to share in the proceeds of sale, *pari passu*, with Earle, though such object is not expressed nor such right claimed in the petition.

The following was the chronological order of proceedings:

January 4, 1878, appellee's judgment for $7,700 and interest (R. p. 3). February 11, 1879, appellant's judgment for $7,386 and interest (R. p. 10). April 9, 1879, appellee's *fi. fa.* returned *nulla bona* (R. p. 3). April 10, 1879, appellee files his bill (R. p. 1). June 11, 1879, decree for sale of property to satisfy appellee's judgment, and trustee appointed to make sale (R. p. 6). October 24, 1879, trustee offers the property at auction, but gets no adequate bid and withdraws it (R. p. 14). December 2, 1879, Freedman's Company issues *fi. fa.* (R. p. 10). December 19, 1879, *fi. fa.* returned *nulla bona* (R. p. 10). December 27, 1879, Freedman's Company obtains leave "to intervene * * as a petitionary creditor," and files petition (R. pp. 8, 11). May 17, 1880, property sold by trustee under Earle's decree for $5,525 cash (R. p. 14). June 25, 1880, sale ratified and cause referred to the auditor (R. p. 20). July 3, 1880, auditor reports and distributes the whole sum to Earle (R. p. 21). July 28, 1880, Freedman's Company excepts to the report claiming *pro rata* distribution (R. p. 23). September 14, 1880, Special Term by decree confirms report; and Freedman's Company appeals to General Term (R. p. 24). December 10, 1880, General Term affirms decree of Special Term, and Freedman's Company appeals to Supreme Court U. S. (R. p. 26).

The appellants assign for error, that the court below erred in applying the net proceeds of sale to the payment of Earle's judgment, and in excluding the appellants from participation therein ; the fund, they say, should have been distributed *pro rata* or rateably, and not according to seniority of judgment.

In support of this they contend :

"1st. That a judgment at law does not constitute a lien upon an equity of redemption such as Dodge had in the property." Citing Morsell *vs.* The Bank, 91 U. S., 357. The best answer to this point is the language of the court in that case.

"The judgments in no wise affected the trust premises UNTIL THE BILL WAS FILED. THAT CREATED A LIEN in favor of the judgment creditors. There was none before."

"2nd. In a race of diligence in an equity court, in a case of this kind, there being no laches, no advantage can be obtained by one judgment creditor over another." Citing Day *vs.* Washburn, 24 Howard, 352, and Trustees *vs.* Beers, 2 Bl., 457.

These cases do not sustain the proposition. The first was one in which there were no judgment creditors, and in denying a preference to ~~any~~ simple contract creditor, Mr. Justice Nelson said : "The court of chancery does not give any specific lien to a *creditor at large* against his debtor further than he has acquired at law ; for as he did not trust the debtor on the faith of such lien, it would be unjust to give him a preference over other creditors, and thus defeat a *pro rata* distribution which equity favors unless prevented by the rules of law. *It is only when he has obtained a judgment and execution in seeking to subject the property of his debtor in the hands of third persons, or to reach property not accessible to an execution, that a legal preference is acquired which a court of chancery will enforce.*"

The second case simply held that where one bondholder

had filed a bill for himself and all others secured by the same mortgage, it was error in the decree below to provide for the plaintiff only and not for the other bondholders.

The only other authority cited is from "them of old time," that "the race is not to the swift nor the battle to the strong." And this is just, for speed and strength imply no moral merit in the possessor; but diligence does, and the same authority tells us that. "The soul of the sluggard desireth and hath nothing, but the soul of the diligent shall be made fat," in accordance with which are our well-considered maxims of equity, "*Qui prior est in tempore potior est in jure.*" "For precedency in time will, under many circumstances, give an advantage or priority in right; hence when the legal estate is outstanding equitable encumbrances must be paid according to priority in time, and whenever the equities are unequal the preference is constantly given to the superior equity." Story's Eq. Jur., §64*d*. "And the equities are equal between persons who have been equally innocent and equally diligent." *Ibid.*, §64*e*. This doctrine has been applied by Chancellor Walworth in a case like the present cited below (Edmeson *vs.* Lyde).

There is, strictly speaking, no question of laches, but one of diligence; but can the appellants say they have been guilty of no laches, when they have "lingered on the way," and had not put themselves in a position to ask anything of a court of equity when the bill was filed, or even when the decree was rendered.

"3. The fund resulting from the sale made under the decree of the equity court constitutes equitable assets and must be distributed *pro rata* and not according to priority of judgment."

The answer to this contention in a similar case was well stated in the Supreme Court of the District of Co-

lumbia, Wylie J. (Wash. L. R., Vol. XI, p. 722, Nov. 17, 1883):

"We think, however, that the doctrine of the distribution of equitable assets is one which has no application to the present case.

"That doctrine applies only to the payment of debts due by a *deceased* person, and not to a fund arising from the sale under decree of court of the estate of a living person in the condition of the property which was so sold in the present instance. The word *assets* signifies *good enough* to discharge that burden which is cast upon the executor or heir in satisfying the debts and legacies of the testator or ancestor." (Tomlin's Dict.) * * *

"In the distribution of the assets of a deceased person's estate, the object of the court is to bring all parties interested before it and to administer upon all the assets and to close it up. In the case of the distribution of a fund derived from the sale of property belonging to a living person, made under decree of court, no estate is to be settled, but only a fund to be distributed, amongst such creditors as have already procured a lien upon the fund, and if there be a surplus it will be handed to the owner of the property sold, notwithstanding he may have numerous creditors, whose claims have not been reduced to liens.

"If we were, in the present case, to be led by the doctrine of equitable assets, we should be bound to go much further than is asked by the complainants; and direct a reference to the auditor, with instructions to publish a notice requiring all parties interested as creditors of the defendant, whether by judgment or otherwise, to come before him, and prove their claims, in the same manner as though he were deceased; and make a *pro rata* distribution amongst them all."

The reason for the distinction between the rules of dis-

tribution governing courts of equity in dealing with decedents' estates on the one hand and with the property of living debtors on the other, is stated by Chancellor Kent in Williams *vs.* Brown, 4 J. C. R., pp. 682–5 : "The court does secure an equitable distribution of the real and personal assets of the deceased debtor upon the terms and under the limitations explained at large in the late case of Thompson *vs.* Brown and others. But the doctrine in that case does not apply to the case of a debtor in full life, *for there is no equitable trust created and attached to the distribution of the effects in the latter case.*"

The cases cited in appellant's brief in support of the third proposition are all cases arising on the distribution of decedents' estates, with a single exception, which was a case of bankruptcy where there was likewise an "equitable trust created and attached to the distribution." All the citations from Story are from his chapter on administration, and the general language used by Story in § 552 of the text is modified or explained by note 2, p. 613:

"In some cases it is necessary to go into a court of equity to enforce payment out of what are properlyy legal assets. Thus, for instance, if there should be a lease for years, or a bond debt or an annuity in a trustee's name belonging to the deceased; then, although a creditor could not come at it without the aid of a court of equity, yet the assets would be treated as legal assets and should be applied in the course of administracion as such." Citing authorities.

Points for Appellee.

I. *The appellants were not parties to the suit below, and have no right to be heard here to claim any of the proceeds of sale.*

(*a.*) Earle filed his bill for himself alone and not in be-

half of or for the benefit of any others. His proceeding was in the nature of an equitable *fieri facias*.

Adams' Equity, 129, 130.

Tyler's Mitford, 220.

And the decree followed the prayer of the bill, and was all the decree that could have been rendered on such a bill.

The petition of the appellant did not, on its face, seek to set aside, modify, or in any way interfere with that decree. If that decree was lawful, it did not by any contention seek to interfere with it, for the petition only prayed that the proceeds of sale be "distributed according to law."

The petition did not call on Earle for any answer. It made no allegations as to Earle's bill or his proceedings, and made no reference whatever to their character. It simply put the title of Earle's case at the head of the petition, and told nothing about it. It made its own case and its own allegations, and called on Dodge, Blackford and Cragin to answer, and did not require any answer from Earle. Dodge only answered; and no further proceedings were had. Cragin and Blackford, who were necessary parties to any proceeding to reach the trust property held by Cragin, never answered, and no decree *pro confesso* was taken against them. The petition was never brought to a hearing, or set down for hearing, and the court, of course, never made any decree in regard to it.

By merely obtaining leave of the court, after the decree, to file a petition in the suit of a stranger, and filing it, and obtaining no further order of the court, the appellants acquired no right to interfere in the execution of the decree made upon Earle's bill.

b. The appropriate office of a proceeding such as the appellants undertook (if, indeed, it had any) was, without interfering with Earle's claims, to place them in such

a position that if the proceeds of sale had more than satisfied Earle's judgment, the residue should not be paid over to Dodge, but be intercepted by them. But as to any interference with the execution of Earle's decree, or the application of the proceeds in accordance with it, the petition is wholly inappropriate and insufficient, and, in fact, is silent.

Such being the office of the petition, the petitioners were in the position of the appellants in the case of Bayard *vs.* Lombard, 9 How., 530.

That was a case where property being sold under a *venditioni exponas*, and money brought into court (under Pennsylvania practice); a petition was filed (under same practice) by another judgment creditor claiming a priority. The cause was referred to an auditor who reported against the petitioner; he excepted, but the report was confirmed, and petitioner appealed. The court, by Greer, J., said: "The persons complaining in this case should have filed their bill in equity, or stated an issue in due legal form, with proper parties, setting forth the merits of their respective claims, if they intended to prosecute an appeal or writ of error to this court. * * But having submitted the question on which their claim depended to the court below on a motion collateral to the record, the decision of that court is final and conclusive, and cannot be reviewed by this court." P. 531.

The case of Bayard *vs.* Lombard was approved and applied in Curtis et al. *vs.* Pettipan et al., 18 How., 109, where an attempt was made to appeal from a decision of the court below *upon a rule taken* by an intervenor respecting the distribution of a fund.

The decree appealed from in this case is the decree of December 1880, confirming the auditor's report. The decree of the Special Term, of June 11th, 1879, applying the proceeds of sale to the satisfaction of Earle's judgment, had not been, when the cause was referred to the

auditor, and cannot now, in this court, be in any manner revised or impaired, because no appeal was taken to the General Term, and the decrees of a single justice of the Supreme Court of the District of Columbia cannot be reviewed here.

The auditor, therefore, could not have made a different report, and it would have been error for the court below to have refused to confirm the report which he did make.

II. *The appellants could not by any proceeding at the date of their petition have prevented the application of the proceeds of sale of the trust property to the satisfaction of Earle's judgment.*

The decree was for his benefit only, and on a bill filed for himself only.

At the date of his bill filed and his decree made, the appellants were not in a situation to claim the application of the property to the satisfaction of their judgment, for they had not then (June 11) issued execution, nor did they do so till more than five months after decree.

This decree was a final decree, so far as any question could be made as to the sale of the property and the application of the proceeds to the satisfaction of Earle's judgment.

After the decree it was not competent for any one to alter by his act the course of distribution thereby directed even if he was a party thereto.

In Bristol *vs.* Hungerford, 2 Vern., 524, a decree had been made that the fund was to be applied to pay mortgages first, and then judgments; whereupon a junior mortgage creditor procured the assignment of a senior mortgage, and sought, by tacking, under the English practice, to obtain a preference for his junior mortgage. And would have succeeded, but the court said: "The assignment obtained by him *being*

after the decree made, he shall not profit by it or change the order of payment, but must come in according to the time of his own incumbrance without regard to the old judgment and mortgage which he got after decree and report."

In Strike *vs.* McDonald, 2 H. & G., 191, the bill was filed by a creditor to reach the property of the debtor, charged to have been fraudulently conveyed to one Strike to defeat creditors. A decree was passed declaring void the deeds complained of, and that the property be sold and proceeds brought into court, reserving all equities as to the distribution. After decree, and on reference to auditor, defendant Strike sought to set up a claim under the decree to the whole proceeds, in preference to all other claimants, which thus would have defeated the complaining creditor's demand.

The court said (p. 218): "Before a plaintiff can call for a determination in his favor, he must furnish the court with a basis on which to rest its judgment. In this case the validity and sufficiency of the plaintiff's claim are the very foundations of the decree; without that claim having been proved or admitted, no such decree ought or could have been rightfully made. It does, therefore, necessarily and conclusively establish the plaintiff's claim, and, consequently, that claim cannot now, in this stage of this cause, be again in any manner put in controversy. * * The reservation of all equities must not be used to fritter away and abnegate the substance of any matter which had been in a previous part of the decree carefully and solemnly decided. No directions, therefore, will, or can now, be given which are incompatible with the points settled by the decree. It is now brought before the court to be executed and completed, not in any manner to be revised or impaired."

III. *By the filing of his bill, the appellee obtained a specific lien upon Dodge's equity therein described which gave him an absolute priority over all other creditors.*

The real estate in the bill described having been conveyed in trust to secure the payment of a debt still unpaid, the filing of the bill gave the complainant a lien upon it.

Morsell *vs.* First Nat. Bank, 91 U. S., 357–361.

In that case Morsell had conveyed property in trust to secure a debt. Then the bank and others obtained judgments against him; then Morsell further encumbered the same property. The judgment creditors then filed a bill to reach the property, and the contest was between them and the subsequent incumbrancers. The court decided in favor of the latter, saying:

"The judgments in no wise affected the trust premises until the bill filed. *That created a lien* in favor of the judgment creditors: there was none before."

Earle had a right to file the bill for himself alone.

In Edmeson *vs.* Lyde, 1 Paige, 637, complainants recovered judgment against defendant, issued execution, which was returned unsatisfied, and filed their bill praying discovery and satisfaction out of defendant's equitable estate. By the answers the facts stated in the bill were admitted, but it was alleged that there were other judgment creditors whose judgments were prior to the complainants.

The court said: "The first question is as to the rights of the other judgment creditors of the defendant, and whether they are necessary parties. It might be sufficient in this case to say they do not stand in the same right with complainants as it does not appear that their executions have been actually returned unsatisfied, which was necessary to give them any right to come into this court for relief. But it may be useful to enquire whether they

would be necessary parties even if that fact was distinctly alleged in the answer." And the chancellor concludes that a judgment creditor may file a bill in his own name and for his own benefit, and he continues :

" Where the property is not levied on by the execution or where, from its nature, it could not be reached by an execution at law, the return of the execution unsatisfied does not give to the creditor any specific lien. He must follow up his execution by the commencement of a suit here before he can obtain any claim to a priority. The creditor whose legal diligence has pursued the property into this court is entitled to a preference as a reward of his diligence. In Edgell *vs.* Haywood (3 Atk. R., 357), Lord Hardwicke says : 'The court does not proceed in this case on the ground of a specific lien, but only considers it a part of the property of the debtor which the creditor cannot come at without the aid of this court. If, therefore, after judgment, or even after a *fieri facias* had been issued, the debtor had assigned this *bona fide* and for a valuable consideration and without notice, it would be good and prevail against this creditor. But after a bill brought and a *lis pendens* created as to this thing, such an assignment could not prevail.' * * If the creditor, whose execution is first returned unsatisfied, pursues the race of legal diligence by the commencement of a suit here, he will obtain the reward of his diligence ; but if he abandons the pursuit and lingers on the way before he has obtained a specific lien, he has no right to complain if another creditor obtains a preference by superior vigilance. The other judgment creditors were not necessary parties and the complainants are entitled to a preference in payment out of the equitable assets which belonged to the defendants at the time of the commencement of this suit."

1 Paige, 639–40.

In the present case there were no other persons competent

to be joined with Earle as complainants, for the appellees had not then issued execution, and until execution issued and returned *nulla bona*, they could not have brought such a suit.

Jones *vs.* Green, 1 Wallace, 330.

In that case a bill was filed by a judgment creditor to reach an equitable interest in real estate before execution issued; and the bill was dismissed.

IV. *The appellants have never obtained any lien upon the equitable estate of Dodge, or its proceeds, unless they obtained it by the filing of the petition, and it must be postponed to the lien previously obtained by Earle.*

If Earle obtained any lien by the filing of his bill, it was a specific lien for the amount of his judgment, and the decree was passed to enforce this lien. When the bill was filed appellants could not have filed a bill for themselves, and no one could have filed a bill for them; and, what is more to the point, they did not file a bill, nor did any one file a bill for them. Their judgment in no wise affected the trust premises at the time Earle's bill was filed, and the *lis pendens* created by that bill was notice to appellants and to all the world that Earle claimed for himself a lien to the amount of his judgment on the trust premises. But it was notice of nothing more, and, subject to Earle's lien, Dodge was as free to deal with his equitable estate as before the bill filed. An illustration will make this clear: suppose the property to have been valuable enough to have paid both judgments, and suppose Dodge had, *bona fide*, to secure another debt, put a second deed of trust on his property, for an amount equal to appellants' judgment, before they filed their petition.

Under the reasoning of this court, in Morsell *vs.* The Bank, Earle's judgment would still have priority over this

second trust, and this trust would create a lien superior to appellants' judgment.

Could it then be held that the appellants would be postponed to the second deed of trust, but would not be postponed to Earle's lien, which was prior to that deed of trust?

V. *Earle, having the first judgment, is entitled to priority of payment.*

Courts of equity have jurisdiction to aid creditors by declaring void conveyances made to defraud them. In such cases it seems to have been held that the obstacle to the attaching of the lien of the judgment being only apparent and not real, and being removed, the judgments were payable according to priority. That is a distinct ground of jurisdiction from that laid in the present case. But even in a suit of that kind Earle would have had a priority, for he had the first judgment and the first execution.

But the ground of jurisdiction in this case is the right of equity to lend the aid of its process merely to enforce a right which the law has determined. Equity here is not called upon to determine any right as between Earle and Dodge. It has only to sell Dodge's property, which the marshal cannot sell, and incidentally to state an account between Dodge and certain strangers and ascertain what is his property. The proceeding is purely supplemental.

The jurisdiction of the court in such case is simply to enforce a right, and being purely supplemental and in aid of the law, it is a case in which equity follows the law.

"The jurisdiction of courts of equity to grant relief, originates, as we have seen, in the occasional inadequacy of the remedy at law, and the supplemented character which it there sustains, gives rise to two important max-

ims, the one that equity follows the law; the other that he who would have equity must do equity. Adams' Eq., marg. p. xxxvii.

In Forth *vs.* The Duke of Norfolk, 4 Mad., 504, the court said: "A judgment creditor has at law by the Statute of Frauds, execution against the equitable freehold estate of the debtor in the hands of his trustee, provided the debtor has the whole beneficial interest, but if he has left a partial interest only in his equitable freehold estate, the judgment creditor has no execution at law though he may come into a court of equity and claim there the same satisfaction out of the beneficial interest as he would be entitled to at law if it were legal."

In the late case of Pool *vs.* Daley, in the Supreme Court of the District of Columbia, 1 Mackey, 460, it was said that there are three rules for the distribution of the proceeds of an equity of redemption, which have more or less foundation in authority: 1st. According to the order of priority in obtaining judgment; 2d. According to the priority obtained by first filing the bill; 3d. Distribution *pari passu*. The court did not, as stated in appellants' brief, "adopt the *pro rata* rule," and distinctly refused to adopt any of the three rules, but disposed of the case "on considerations peculiar to it," the result of which was that in contemplation of equity the two judgments between which the controversy arose were recovered simultaneously.

If either the first or the second rule should be approved by this court, the decree of the court below in this case must be affirmed. We think it impossible to apply the doctrine of equitable assets to such cases as these. The authorities in favor of the first rule are well stated by Mr. Justice Wylie in the case of Yates *vs.* Seitz, above noticed, in which the Supreme Court of the District of Columbia deliberately adopted that rule in 1869; but under the decision of this court in Morsell *vs.* The Bank, we